

## **REMARKS**

This application has been carefully reviewed in view of the current Office Action in which all claims stand rejected based upon Schneck et al in view of Dolphin.

The undersigned, as well as Patent Counsel for the Assignee, have reviewed the current Office Action as well as the Schneck and Dolphin references. As best understood, both the Schneck and Dolphin references relate to mechanisms for accessing encrypted data stored on physical media (called packaged data in Schneck) such as, for example, a CD. Our review found little similarity of any sort between these cited references and the claims at issue.

By way of illustration, consider the rejection to claim 1. The undersigned has provided an element by element analysis below. The Examiner has requested (paragraph 42 of the Office Action) that the Applicants review the references in their entirety for appropriate application of the references in this rejection. This is tantamount to asking the Applicants to formulate their own rejections. It is noted that the Examiner bears the burden of establishing *prima facie* obviousness, but that notwithstanding, the undersigned has indeed reviewed the references and presents the following findings:

<b>CLAIM 1</b>	<b>Schneck</b>	<b>Dolphin</b>
A method of facilitating a transaction for downloadable digital data over an electronic network, the method comprising:	No identifiable disclosure - Schneck facilitates access to packaged data	No identifiable disclosure - Dolphin facilitates access to physical media
maintaining a presence on the electronic network to which a consumer may connect;	Could possibly read on element 12.	Could possibly read on element 102.
transmitting a page from the presence to the consumer over the electronic network, the page including information concerning the downloadable digital data;	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media.

receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the downloadable digital data;	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. Consumer access is defined by access parameters.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. Consumer contacts billing center 23 to obtain access code for CD.
transmitting format options from the presence to the consumer over the electronic network via the page, the format options being selectable by the consumer	No identifiable disclosure in the cited passage or the reference as a whole.	No identifiable disclosure in the cited passage or the reference as a whole.
and including at least one of		
(i) types of software on which the downloadable digital data may be executed;	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. No similar disclosure found.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. No similar disclosure found.
(ii) types of portable devices on which the downloadable digital data may be stored;	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. No similar disclosure found.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. No similar disclosure found.
(iii) types of compression formats in which the downloadable digital data may be configured;	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. No similar disclosure found.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. No similar disclosure found.

(iv) types of CODECs through which the downloadable digital data may be processed; and	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. No similar disclosure found.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. No similar disclosure found.
(v) types of digital rights management algorithms to which the downloadable digital data may be subject	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of packaged data. Digital usage rights for packaged data are discussed.	No identifiable disclosure in the cited passage or the reference as a whole - the digital data is in the form of physical media. Digital usage rights for physical media are discussed.

A very similar analysis could be done on each of the other independent claims with similar outcome. However, as shown above, the cited references are so dissimilar that the undersigned feels that a detailed analysis is unnecessary. Accordingly, none of the independent claims are anticipated or obviated by the cited references either individually or collectively. Thus it follows that none of the dependent claims can be anticipated or obviated. It is therefore believed clear that all claims should be allowed at an early date.

In the event the same reference is used to reject the current claims, the undersigned requests that the Examiner provide a detailed element-by-element explanation of how each claim element is met by the cited references in order to better understand and address the rejections.

The undersigned additionally notes that many other distinctions exist between the cited reference and the invention as claimed. However, in view of the clear and multiple deficiencies pointed out above, further discussion of these distinctions is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position.

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date.

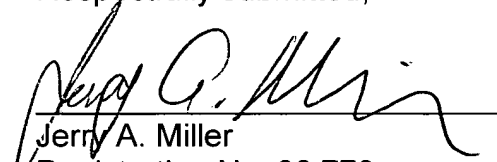
**REQUEST FOR INTERVIEW:**

In the event the Examiner believes that the undersigned has somehow misinterpreted the rejection, the undersigned respectfully requests the courtesy of a telephone interview. The undersigned can be reached at the telephone number below.

**INFORMATION DISCLOSURE STATEMENT:**

The undersigned submits herewith an additional information disclosure statement that discloses references identified in co-pending applications to related subject matter. Consideration of these references is respectfully requested.

Respectfully submitted,

  
Jerry A. Miller  
Registration No. 30,779

Dated: 12/7/2004

Please Send Correspondence to:  
Jerry A. Miller  
Miller Patent Services  
2500 Dockery Lane  
Raleigh, NC 27606  
Phone: (919) 816-9981  
Fax: (919) 816-9982  
**Customer Number 24337**